

REMARKS

This is a full and timely response to the outstanding final Office Action mailed February 23, 2005. Reconsideration and allowance of the application and presently pending claims 1-3 and 5-20, as amended, are respectfully requested.

1. Present Status of Patent Application

Upon entry of the amendments in this response, claims 1-3 and 5-20 remain pending in the present application. More specifically, claims 1-2, 5-9 and 15-20 are directly amended. These amendments are specifically described hereinafter. It is believed that the foregoing amendments and additions add no new matter to the present application.

In accordance with 37 U.S.C. 1.114, a Request For Continued Examination is filed concurrently with this Response To The Final Office Action so that the Office Action mailed October 26, 2000 (Paper No. 8) is effectively made non-final.

2. Response to Rejection of Claims 1-3 and 5-20 Under 35 U.S.C. §103

In the Office Action, claims 1-3 and 5-20 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Liang et al.* (U.S. Patent 5,732,086), hereinafter *Liang*, in view of *Wood* (U.S. Patent 6,405,248). It is well-established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claim at issue. See, e.g., *In Re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988), and *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Independent Claims 1, 8 and 15

Applicants respectfully submit that independent claims 1, 8 and 15, as amended, are allowable for at least the reason that the proposed combination of *Liang* in view of *Wood* does not disclose, teach, or suggest at least the feature of "creating a list of existing tuples from an existing topology representing nodal connections of a network at a prior time" as recited in claims 1 and 15. Similarly, the proposed combination of *Liang* in view of *Wood* does not disclose, teach, or suggest at least a feature that

“determines differences between the new tuples with the existing tuples representing nodal connections of the network at the prior time” as recited in claim 8.

Liang is apparently limited to, at most, a system where “the originating node constructs and stores a topology table entry which includes data from received ACK messages.” (Abstract). That is, *Liang* is limited to generating the network topology at a current time. Thus, *Liang* fails to disclose, teach or suggest every element of the Applicants’ claimed invention.

Wood also fails to disclose, teach or suggest at least the above recited features of independent claims 1, 8 and 15. As alleged in the Office Action, *Wood* is limited to teaching, at most, “creating an accurate topology map of a given network by: obtaining a list of managed network device; identifying link port and node port ... device interface information (see abstract)” (Office Action at page4). Thus, *Wood* fails to disclose, teach or suggest every element of the Applicants’ claimed invention.

Accordingly, the proposed combination of *Liang* in view of *Wood* does not teach at least the claimed limitations of “creating a list of existing tuples from an existing topology representing nodal connections of a network at a prior time” as recited in claims 1 and 15, or a feature that “determines differences between the new tuples with the existing tuples representing nodal connections of the network at the prior time” as recited in claim 8. Therefore, a prima facie case establishing an obviousness rejection by *Liang* in view of *Wood* has not been made. Thus, claims 1, 8 and 15 are not obvious under proposed combination of *Liang* in view of *Wood*, and the rejection should be withdrawn.

Because independent claim 1 is allowable over the cited art of record, dependent claims 2-3 and 5-7 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that dependent claims 2-3 and 5-7 contain all limitations of independent claim 1. Similarly, because independent claims 8 and 15 are allowable over the cited art of record, claims 9-14 and 16-20 (which depend from independent claims 8 and 15, respectively) are allowable as a matter of law for at least the reason that dependent claims 9-14 and 16-20 contain all limitations of their respective independent base claim. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, the rejection to these claims should be withdrawn.

3. Observations Regarding George

In the Office Action mailed July 6, 2004, the claims were rejected under 35 U.S.C. §102 under an allegation that the claims were anticipated by *George et al.*, (U.S. Patent 4,644,532), hereinafter *George*. Applicants amended independent claims 1, 8 and 15 to distinguish the claims from *George*. These distinguishing amendments were sufficient to distinguish the claims, as shown by the new rejections under 35 U.S.C. §103(a) which allege all claims are unpatentable over *Liang* in view of *Wood*.

Applicants respectfully note that *George* is limited to a system that “upon determining changes in network status, such network status changes are communicated to the adjacent control nodes” (Abstract). *George* states that “the purpose for maintaining a topology data base in the control node and continuous identification of an ownership session ...” (Col. 14, lines 27-29, emphasis added). That is, *George* is continuously updating its topology database since “changes in resources adjacent to the NC are recorded locally by the NC, and ... it forwards the cause of its report (new resource, failed resource, or change in characteristic) and its local time stamp as a sequence identifier” (Col. 8, lines 35-44).

Applicants respectfully refer the Examiner to MPEP §2143.02, entitled “THE PROPOSED MODIFICATIONS CANNOT CHANGE THE PRINCIPLE OF OPERATION OF A REFERENCE.” The MPEP states that “if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.”

If *George* is modified by *Liang*, *Wood* or another reference to arrive at embodiments of the present invention, then the principle of operation of *George* will change because, first, *George* will no longer be updating continuously, and second, because the NCs will not be the devices initiating changes in the network topology. Because the principle of operation of *George* after modification by *Liang*, *Wood* or another reference to arrive at embodiments of the present invention would be changed, a *prima facie* of obviousness cannot be established under any such possible scenario. Accordingly, the a rejection of the claims under 35 U.S.C. §103(a) cannot be properly established under a scenario wherein *George* is modified by *Liang*, *Wood* or another reference.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-3 and 5-20 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,



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